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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/155,740 | 02/27/1998 | DEBORAH ANN LEWIS | 0885/0D930 | 9069 |

7590 11/20/2002

DARBY & DARBY
805 THIRD AVENUE
27TH FLOOR
NEW YORK, NY 10022

EXAMINER

PRATT, HELEN F

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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1761

25

DATE MAILED: 11/20/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

21
Office Action Summary

Applicati n N .

09/155,740

Applicant(s)

LEWIS ET AL.

Examin r

Helen F. Pratt

Art Unit

1761

-- The MAILING DATE of this communication app ars on the cover sh et with the correspond nce address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 November 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Steinwand or Reznik in view of the prior art and GB 1004522 and GB 1228175 (from Applicants PCT) and Hsieh et al.

The claims are rejected for the reasons of record cited in the last office action and for these further reasons.

Claim 1 has been amended to require that solutes are introduced into the dried fruit to produce a soft dried fruit and that the fruit structure is disrupted by mechanical or physical processes to produce cracks on the surface of the fruit. However, Steinwand does provide a hydroxide treatment before puncturing in order to firm the surface of grapes, but this treatment is a separate treatment from step "b" of claim 1, which is to disrupting the structure of the fruit with mechanical etc. means. It is not seen that the claim excludes the hydroxide treatment step. Disrupting the structure of the fruit as on page 5, lines 11-19 is to making some type of fissure in the fruit. Treating with hydroxide does not cause fissures, but firms the surface of the fruit (col. 1, lines 44-55, and page 2, col. 1, lines 35-40). As to Reznik, no other treatment is used that is not mechanical or physical in making cracks in the fruit which becomes soft. (col. 2, lines

Art Unit: 1761

25-60, col. 1, lines 35-42). Therefore, it would have been obvious to disrupt the skin of fruits as disclosed by the above references.

Claims 18 and 19 have been added to require particular water activities (Aw). Hsieh et al. disclose that fruits with Aw's of 0.30 are known, and this depends on the level of humectant (abstract). Therefore, it would have been obvious to use known Aw's in the process of Steinwand or Reznik because they are also to infusing fruits with water activity controlling solutes.

ARGUMENTS

Applicant's arguments filed 11-1-02 have been fully considered but they are not persuasive. Applicants argue that the claims now exclude the use of sodium hydroxide. This is not seen for the reasons stated above. In addition, other references do not use sodium hydroxide, but still puncture or fissure. Applicants argue that the reference to Steinwand does not exclude the use of sodium hydroxide and that the process modifies the product internally and that this is the opposite of what is being claimed. However, this is not seen as treating the surface of the fruit is not the same as disrupting the surface of the fruit.

Applicants argue that the Steinwand process requires the sodium hydroxide treatment. Even so, the claims do not exclude this treatment. In addition, one way of excluding a reference is to use the phrase "consisting of".

The further references such as Reznik show that fissuring before infusing is well known, and the fruits used do not need any hydroxide treatment. Hsieh et al. infuses raisins without any fissuring. Unilever '522 also punctures before infusing (page 1, col.

Art Unit: 1761

2, lines 65-90). The use of sodium hydroxide as shown by these references is according to the particular fruit or vegetable to be infused. Certainly, if the fruit did not dissolve to a paste during processing as in Steinwand the hydroxide treatment would not have been necessary as shown by the other references. Therefore, considering the state of the art, it is seen that it would have been within the skill of the ordinary worker as to whether to use the sodium hydroxide treatment or not.

Applicants argue that the Reznik patent's aim is not to lower the water activity of the dried fruit, but to increase it and that the Reid Declaration says that the process is to enhance rehydration of the dried fruit. However, Applicants' process is to introducing solutes into a dried fruit, (line 1, claim 1), to infuse the fruit (step c) this is certainly, rehydration, and then drying the fruit to a desired moisture content and water activity. Apparently, the rehydrated state of the date is their chosen moisture content and water activity (col. 2, lines 34-50 Reznik).

Applicants argue that the Reznik patent uses a vacuum to draw water into the dates, and that is not needed to this invention. However, the claims do not exclude this limitation.

It is noted that the references to Steinwand and Reznik are used separately and not combined.

Applicants argue as to the British patents that one would not look to them when treating dried fruits. This is not seen because Martin, 1,228, 175, teaches that the pulses are freeze-dried (i. e. a dried product) to remove 5 –60% moisture and then infused and can also be pricked or ruptured (col. 1, lines 25-46 and col. 1-66-90). The

process of Martin et al. '175 is not limited to what applicants state and applicants' claims require providing a dried fruit. Martin '175 (col. 1, lines 25-38) discloses disrupting a freeze dried (i. e. dried vegetable) structure as in parts a and b of claim 1, (col. 2, page 1, lines 66-70), adding solutes Martin '175, lines 72-80(as in part c of claim 1) and drying the fruit (page 3, lines 80-85).

Hsieh is used in combination discloses that dried fruit can be infused which since it is dried, must have cracks in the skin.

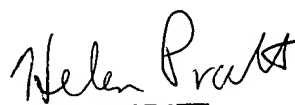
Applicants argue as to further combining Reznik with the other references. However, they each are used for what they teach as disclosed in the office actions. Applicants have not limited their claims to exclude other teaching of the references.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 703-308-1978. The examiner can normally be reached on Monday, Wednesday and Friday from 9:30 to 6:00 and Tues and Thurs. from 4:30 to 10 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on (703) 3959. The fax phone number for the organization where this application or proceeding is assigned is 703-308-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1193.

Hp 11-13-02


HELEN PRATT
PRIMARY EXAMINER